84-1926

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No.

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1984

MILTON A. REID, et al.,

*Petitioners,*

vs.

ULYSSES GHOLSON, et al.,

*Respondents.*

## PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF VIRGINIA

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## Question Presented

Does the appointment by the Circuit Court of the City of Norfolk, Virginia, of a Special Commissioner in Chancery who, accompanied, and, where necessary, assisted by a deputy sheriff of the said City, is empowered to "run and oversee" the annual meeting of an independent congregational church violate the First Amendment to the Constitution of the United States, and, in particular, the Free Exercise Clause thereof? The Supreme Court of Virginia held that it did not.

## Parties

Milton A. Reid, Briscoe Boddie, Kenneth Bellamy, St. Paul Lewis and James Bridgers, petitioners, and Ulysses Gholson and Inez F. Sykes, respondents.

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## Opinions Below

The opinion of the Supreme Court of Virginia is reported at 327 S.E. 2d 107 (1985), and reprinted in full at Appendix A.[1] The order of the Circuit Court of the City of Norfolk, Fourth Judicial Circuit of Virginia, of October 27, 1983, which, inter alia, appointed one William Mazel a special commissioner in chancery to "run and oversee" the next annual meeting of the New Calvary Baptist Church, Norfolk, Virginia, and designated a deputy sheriff to accompany said special commissioner and to "receive such orders from him as appear necessary," apparently unreported, is reprinted in full at Appendix B.

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[1]Although the majority opinion is replete with misstatements of face, counsel believe that they are irrelevant to the constitutional issue here raised, and therefore, will not denominate them herein.

## Jurisdictional Statement

The judgment of the Supreme Court of Virginia was entered on March 8, 1985. This petition for a writ of certiorari was filed within ninety (90) days of March 8, 1985. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1257.

## Constitutional Provisions Involved

The First Amendment to the Constitution of the United States provides, in pertinent part, as follows: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . ."

## Statement of the Case

On or about October 21, 1983, an action in chancery, under the name and style of Ulysses Gholson and Inez E. Sykes (respondents) v. Milton A. Reid, Briscoe Boddie, Kenneth Bellamy, St. Paul Lewis and James Bridgers, (petitioners), was commenced in the Circuit Court of the City

of Norfolk, Fourth Judicial Circuit of Virginia, under Chancery No. C-83-1705, praying for (a) the conducting of the annual meeting of the said New Calvary Baptist Church, and (b) a vote as to the removal of petitioner Reid as pastor thereof. (Appendix C). On or about October 27, 1983, pursuant to a motion filed by respondents (Appendix D), seeking the appointment of a Special Commissioner "to run and oversee the annual meeting of the members of the New Calvary Baptist Church . . . scheduled to be held on Thursday, October 27, 1983, at 7:00 p.m. at the church premises. . ." Hon. Edward L. Ryan, Jr., then Circuit Judge, Circuit Court of the City of Norfolk, Fourth Judicial Circuit of Virginia, appointed one William Mazel (hereinafter, "Mazel") "a commissioner in Chancery. . . authorized and ordered to run and oversee the aforesaid annual meeting. . ."

(Appendix B at 2.) In addition, the said court assigned Deputy Sheriff Gary Benns "to accompany [Mazel] and to receive such orders from him as appear necessary." Ibid.

At approximately 7:00 p.m. on said October 27th, Mazel accompanied by Deputy Sheriff Benns, arrived at the New Calvary Baptist Church to conduct the said annual meeting. However, following a conference with an attorney for petitioners, Mazel agreed that the said meeting should not occur until the adoption of a suitable format and procedure therefor.

Subsequently, and on or about November 3, 1983, petitioners moved the said Circuit Judge Ryan for an order enjoining that portion of his order of October 27, 1983, which appointed Mazel "to run and oversee the aforesaid annual meeting" of the New Calvary Baptist Church (Appendix E). On or about December 19,

1983, Circuit Judge Ryan denied the petition. (Appendix F).

Later, petitioners duly applied to the Supreme Court of Virginia for an appeal from the aforesaid order of December 19, 1983, denying their motion to enjoin that portion of Circuit Judge Ryan's order of October 27, 1983, which appointed Mazel "to run and oversee the annual meeting" of the New Calvary Baptist Church. On or about August 16, 1984, said application was granted. (Appendix G).

On March 22 and March 30, 1984, Hon. Alfred W. Whitehurst, Circuit Judge, City of Norfolk, who had replaced Circuit Judge Ryan upon the latter's retirement, imposed fines upon petitioner Reid of $1,000.00 a day and $100.00 a day upon the remaining petitioners, four deacons of the said New Calvary Baptist Church, for their failure to turn over its membership lists to Mazel. (Appendix H and I). Said fines

have since been reduced to judgments by respondents. (Appendix J and K).

These fines were imposed by Circuit Judge Whitehurst, upon respondents' application therefor, because of petitioners' failure to turn such lists over to Mazel, despite the fact that (1) the church's membership had unanimously voted against said act and directed petitioner Reid not to do so, and (2) the lists were publicly and conspicuously displayed for more than two (2) months upon the church's premises. No part of said fines have yet been paid by any petitioner.

Although Circuit Judge Whitehurst had directed that the annual meeting of the New Calvary Baptist Church take place, under the direction, control and supervision of Mazel at 7:00 p.m. on March 29, 1984 (Appendix L), no such meeting has ever occurred. Moreover, none has been

rescheduled, although the congregation was informed that one would take place on April 8, 1984, following which a meeting was held on that date in the absence of Mazel. Four days later the latter meeting was set aside by Judge Whitehurst (App. M at a-94).

On March 8, 1985, the Supreme Court of Virginia, by a vote of 6-1, affirmed the order of the Circuit Court of December 19, 1983, denying petitioners' motion to enjoin that portion of Circuit Judge Ryan's order of October 27, 1983, which appointed Mazel "to run and oversee the annual meeting" of the New Calvary Baptist Church. (Appendix A). On March 29, 1985, Circuit Judge Whitehurst ordered petitioner Reid imprisoned for thirty (30) days because of his failure to turn over the church's membership list, but, on April 12, 1985, released him from custody

when members of the church surrendered said list, under protest, to the court.[2]

Reasons for Granting the Writ

This case presents a unique opportunity for the Court to consider the extent of secular intrusion into "church administration," which it held in Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696, 709-10 (1976), to be regulated by the Free Exercise Clause of the First Amendment.[3] Petitioners do not

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[2]On May 31, 1985, despite the fact that the church had been cooperating with respondents, Judge Whitehurst ordered petitioner Reid returned to custody to serve the remainder of his term.

[3]Prior to the decision of the Supreme Court of Virginia (Appendix A), petitioners herein, and others, had applied to the United States District Court for the Eastern District of Virginia for injunctive and declaratory relief, raising, as here, the constitutionality of the broad powers of the special commissioner in chancery. Reid et al. v. Mazel (CA 84-114-N). After the dismissal of their complaint, petitioners were

(Footnote Continued)

believe that any court in the history of American jurisprudence has ever attempted to exercise the degree of control over church administration as is here existant. For example, the Circuit Court of the City of Norfolk has, inter alia, arrogated unto itself the power to (a) declare special meetings of New Calvary Church's congregation "void and illegal," (Appendix B at 2-3, App. M at a-94); (b) require voting at church meetings to be "by show of hands," (Appendix L at a-86 ), and (c) establish the agenda for particular meetings; and (d) decide the form of

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(Footnote Continued)
granted an expedited appeal by the Fourth Circuit, which retained jurisdiction pending the resolution of their appeal to the court below. (Appendix N). In affirming the dismissal of the complaint, the Fourth Circuit stated that "[A]ny further relief desired by the parties should be sought. . . by review of the state decision in the United States Supreme Court." (Appendix O at a-106).

notice to be given in connection with church meetings. Ibid. at 3-4.

In addition, it has named a special commissioner in chancery, accompanied and assisted by a deputy sheriff,[4] to "supervise" the church's annual meeting and count the votes, alone or with tellers selected by him, Ibid. at 5, and directed who qualified as a church member and would be accordingly permitted to vote thereat, Ibid. at 3, limited voting to church members over the age of eighteen years, Id., established the method by which their votes would be cast, Id., and how long speakers would be allowed to express themselves upon the agenda items, namely,

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[4]While petitioners have not raised any racial issues, the fact that New Calvary Baptist Church is an all-Black institution and the special commissioner and deputy sheriff nominated by the Circuit Court are white men adds another dimension to the question raised herein.

five minutes each, Id. Moreover, the special commissioner is expressly permitted, should he decide to do so, to preside at said meeting, thus superseding all appropriate church officials. Ibid at 4. Lastly, he was granted sole discretion to call another meeting at a date, time and place designated by him if he deemed one necessary. Ibid at 5.[5]

The dissenting justice below saw clearly the extent of such secular interference with the administration of the church in question. As he put it:

> In short, as a first response to this dispute, the trial court ordered that the church meeting be taken over and run by the state. This remedy was much more than necessary. The majority concedes that in cases of this kind the courts 'must exercise great restraint.' Yet, the majority approved this intrusive remedy as a threshold response to this dispute.

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[5]These orders of the court violate the church's constitution and by-laws, as did its original direction that voting be by secret ballot.

The majority says this remedy was justifed for at least three reasons: First, because the minister and his adherents had established a track record of truculant defiance; second, because the disputing factions could not agree upon an impartial person to run the meeting; and three, because the court might have started itself along an endless path of appointing observers, invalidating improper meeting results, then appointing another observer. These explanations are insufficient to me to justify the level of intrusion that was ordered by the trial court.

In almost every church case that makes its way into the courts, the parties will be sharply divided and in hot debate. At least one side to the dispute is likely to believe that separation of church and state means that the courts have no role to play in church affairs. Such a belief may manifest itself in a defiant attitude. The courts, of course, will not condone such an attitude, however, its existence does not automatically mean that the remedy fashioned by the court should be any less restrained than it would have been had all the litigants been cheerful and pleasant. I am more concerned with striking the proper balance between church and state than showing a defiant minister the full scope of a trial court's power; this is surely true at the threshold.

I think the appropriate remedy would have been to send in the Commissioner as the 'eyes and ears' of the court but otherwise to allow

the church to operate as it customarily operated. This means that if the minister normally presides at a church meeting let him preside--under the watchful eye of the court. The selection of an impartial person to run the church meeting would not be necessary under my threshold approach to this problem. The Commissioner would have a passive role to observe and report back to the court. If the report is that the events leading up to the meeting, e.g., notice, and the conduct of the meeting, e.g., speaking and voting, were fair, then the court could step aside. If the report is otherwise, the court could fashion a more intrusive remedy.

By my approach, there is no risk that the court would embroil itself in a never ending series of appointments of passive observers. If given the chance to conduct a fair meeting under the eyes and ears of the court the minister fails to do so, he would have to face escalating intrusions until a fair meeting was conducted.

My approach would pay proper respect to religious freedom and to the power of the courts to intervene in disputes of this kind. It would make the trial courts start with the least intrusive remedy and move up notch by notch to more intrusive remedies. My approach would make restraint the guiding principle in resolving church-based disputes.

Although this one dissent cannot change the majority result, I hope

> the trial courts will not take the majority opinion to meant that wherever there exists a serious dispute within a church, that it is proper to send a Commissioner and a deputy into the sanctuary to take charge. Such a first-level remedy gives rough treatment to so precious and delicate a right as freedom of religion.

Appendix A at a-37-41.

It is patently clear from the applicable decisional law, on both the federal and state level, that such massive control over a church's internal functions as is here attempted violates and negates the Free Exercise Clause of the First Amendment. In this connection, the Court's attention is respectfully called to such cases as Lemon v. Kurtzman, 403 U.S. 602 (1971); National Labor Relations Board v. The Catholic Bishop of Chicago, 440 U.S. 490 (1979); Jones v. Wolf, 443 U.S. 595 (1979); King's Garden, Inc. v. F.C.C., 498 F.2d 51 (D.C.Cir. 1974), cert. denied, 419 U.S. 996 (1974); Board of Church Extension v. Eads, 230 S.E. 2d 911

(S.Ct. W.Va. 1976); Hill v. Sargent, 615 S.W. 2d 300 (Tex. Ct. Civ. App. 1981); Northside Bible Church v. Goodson, 397 F.2d 534 (5th Cir.1967); Kedroff v. St. Nicholas Cathedral, 344 U.S. 94 (1952); Brady v. Reiner, 157 W.Va. 10, 198 S.E. 2d 812 (1972); Eastern Conference of Original Freewill v. Piner, 267 N.C. 74, 147 S.E. 2d 581 (1966); Simpson v. Wells Lamont Corp., 494 F.2d 490 (5th Cir.1974); Nunn v. Black, 506 F.Supp. 444 (W.D. Va. 1981), aff'd 661 F.2d 925 (4th Cir.1981), cert. denied 454 U.S. 1156 (1982); and Granfield v. Catholic University of America, 530 F.2d 1035 (D.C.Cir.1976).[6]

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[6]Although it deals with the Establishment rather than the Free Exercise Clause, this Court's recent decision in Lynch v. Donnelly, __U.S__, 104 S.Ct. 1355, 1364 (1984), with its discussion of "administrative entanglement" may be instructive.

## Conclusion

Given the authorities cited above and the need to prevent the further secularization of the Nation's religious institutions, certiorari should be granted to establish the needed guidelines to govern and regulate intervention in the internal affairs of Houses of Worship.

Dated: New York, N.Y.

June 6, 1985

Respectfully submitted,

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# APPENDIX

APPENDIX A

Present: All the Justices
MILTON A. REID, et al.,

Record No. 840057

-v-

ULYSSES GHOLSON, et al.

OPINION BY JUSTICE CHARLES S. RUSSELL

March 8, 1985

FROM THE CIRCUIT COURT OF THE CITY OF NORFOLK
Edward L. Ryan, Jr., Judge

This appeal is an outgrowth of a protracted and complex dispute between two factions in the membership of a congressional church. Both factions, at various times, resorted to the counts. Among other things, the court below appointed a commissioner in chancery to "run and oversee" a congregational meeting to insure its fairness. The sole question presented on appeal is whether that ruling was an unwarranted breach of the principle of separation of church and state embodied in art. I, §16 of the Constitution of

Virginia and the First Amendment to the Constitution of the United States.

## I. FACTS AND LEGAL PROCEEDINGS

In order that the issue may be seen in proper perspective, a detailed examination must be made of the facts and legal proceedings below, as shown by the record, including those which preceded the filing of this suit and those which took place pending appeal. The New Cavalry Baptist Church is a large independent congregational church in the City of Norfolk. It has no written Constitution or by-laws and has traditionally been governed by majority vote of its members present and voting at annual congregational meetings. It has never been subject to the control of any hierarchical or supercongregational authority. Customarily, notices of proposed congregational meetings were announced at worship services on two successive Sundays prior to the meeting and

also were published in the newsletter mailed to each member of the church.

Milton Reid has been pastor of the church throughout the period of the dispute. One faction of the membership, which includes several deacons, consists of those who support his views. For convenience, this group will be referred to as "adherents."[1] Those who oppose Reid's views, or convenience, will be called, "dissenters." Those who appear here as appellees, representing the dissenting faction, are Ulysses Gholson and Floyd Lewis, although other individuals have appeared in related litigation as representatives of this group. Gholson and Lewis are trustees of the church, elected by the membership in 1978 to hold title to

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[1]The adherents who appear as appellants here are Milton A. Reid, Briscoe Boddie, Kenneth Bellamy, St. Paul Lewis, and James Bridgers.

the church property and appointed in 1980 by court order to serve in that capacity pursuant to Code §57-8.

In November 1982, certain dissenters filed a bill of complaint against the pastor and certain adherents,[2] asking for a court-ordered congregational meeting to consider resolutions calling for audit of the financial records of the church and for termination of the services of Reid as pastor. The adherents filed an answer asserting that the court lacked jurisdiction of a controversy involving the internal governance of a church due to the Free Exercise Clause of the First Amendment. The court, by order entered January 14, 1983, overruled this objection and ordered all parties to hold a congregational meeting on March 31, 1983,

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[2] Towns, et al. v. Reid, et al., Chancery No. C 82-1860.

to consider the above resolutions and to conduct any other proper business. The order also enjoined Reid from installing officers, ordaining deacons, and setting up an "Executive Council" to govern the church until the congregational meeting had been held.

Ignoring the court's order, Reid convened a "special meeting" of the congregation on January 30, 1983, without giving the customary notice. On motion of the dissenters, the court, on March 7, 1983, held the January 30 meeting invalid for lack of proper notice and declared all actions taken at the meeting void. The court set March 10, 1983 as a new date for the congregational meeting. The court-ordered meeting was not held because, in addition to federal proceedings,[3] the

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[3]On February 28, 1983, the adherents
(Footnote Continued)

adherents noted appeals to this Court from the orders of January 14 and March 7. The trial court enjoined any further action in the case pending appeal. We refused the adherents' petition for appeal on January 15, 1984.

At the January 30, 1983 meeting, later held void for inadequate notice, Reid purported to "silence" eighteen dissenters, including Gholson, forbidding them to speak or vote at that or any subsequent meeting. Thereafter, Reid called a "special meeting" of the congregation on May 8, 1983. There, various controversial matters were discussed, including the proposal, advocated by the adherents, to erect a twelve million dollar "senior citizens home" on church-owned land, to be called

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(Footnote Continued)
filed a motion in the United States District Court for removal of the case to that court. The District Court dismissed the case by order entered March 30, 1983.

"Calvary Towers." Notwithstanding the "silencing" of certain dissenters, the dissenters won the support of the majority of those present and voting. Reid delayed announcing the results of the voting for two hours, during which time "absentee cards" were produced from church members not present. Although absentee or proxy voting had never been authorized by the congregation, and was contrary to its custom, Reid announced that, with the addition of the absentee ballots, the adherents had won.

In September 1983, Reid mailed a notice to members that the annual meeting of the congregation would be held on Thursday, October 27, 1983. At that meeting, the primary item on the agenda was to be the adoption of a written constitution for the church. The proposed constitution would terminate the congregation's right to vote on all

controversial matters; instead, such matters would be decided by an "Executive Council." The constitution also would permit the "termination" of a person's membership at any meeting without prior notice. Under the proposed constitution and by-laws, control over church property "and such other responsibilities as may be assigned" were to be vested in a "Property Chairperson." The status of the court-appointed trustees was unclear; the proposed constitution did not mention them.

Under the date of October 24, three days before the meeting, Reid mailed letters to Gholson and 62 other dissenters, informing them that they were "not certified to participate in the Annual Meeting because of discplinary action by the church." The letters enclosed a copy of a purported "Code of Conduct," which stated that it had been adopted by the "Executive Council, and the Minister,

Milton, the Disciple."[4] The "Code of Conduct" provided that members not "certified by the church office," members "silenced by the church," and "members whose actions violate the spirit of the "Church Covenant" would not be permitted to participate in the meeting. The Code also promised silencing, after warning, to "[a]ny member who disregards or disrespects the chair."

On October 21, 1983, Gholson and Lewis, for the dissenters, filed this suit[5] by bill in equity in the circuit court. Reciting the undemocratic proceedings of the adherents in the past, they asked for

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[4]The record does not disclose any action by the congregation authorizing or electing an Executive Council. If such a council was appointed by Reid, it was apparently done in violation of the January 14, 1983 injunction in Towns, et al. v. Reid, et al.

[5]Gholson, et al. v. Reid, et al., Chancery No. C 83-1705.

the appointment of a Special Commissioner to "run and oversee" the proposed congregational meeting "in the interest of having a fair and impartial annual meeting." The case was set for hearing on the morning of October 27, but at 9:34 a.m. on that day, the adherents filed a petition for removal to the United States District Court, invoking 28 U.S.C. 1446.[6] After a hearing, the federal court determined that it had no jurisdiction and entered an order at 2:00 p.m. on October 27, remanding the case to the circuit court. After conferring with the judge of the circuit court, the United States District judge instructed counsel to appear in the circuit court at 3:00 p.m.

At 3:00 p.m. on October 27, the circuit court heard evidence and received

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[6] Gholson, et al. v. Reid, et al., Civil Action No. 83-720N.

exhibits filed by the dissenters. Notwithstanding their direct, personal notice of the hearing, neither the adherents nor their counsel appeared.

The court made the following findings: (1) At the proposed congregational meeting, the members would be called upon to decide the right, title, and control of all property held in trust for the congregation, that both civil and property rights were involved, and that substantial justice would be promoted by a fair and impartial meeting; (2) that the adherents proposed to adopt, at the meeting, a constitution which would divest the trustees of title to the church property and vest the same in a "Property Chairperson," and which would take from the congregation its right to resolve any controversy concerning church property; (3) that the adherents were charged with having conducted the undemocratic proceedings

described above, which if persisted in, would result in an unfair and partial annual meeting; (4) that the court was not required to resolve any ecclesiastical issues; and (5) that the civil and property rights in dispute could be resolved by the use of neutral principles of law, without violating the First Amendment.

The court granted the petition for appointment of a Special Commissioner to "run and oversee" the annual meeting, to take an accurate count of the voting, and to make a report to the court of the results, including "any irregularities that may occur." The dissenters nominated William Mazel, a commissioner in chancery, for this duty. He accepted and was appointed. The court also designated a deputy sheriff to accompany the commissioner and to "receive such orders from him as appear necessary."

The meeting scheduled for October 27 was not held. Instead, the adherents filed a petition to enjoin Commissioner Mazel from "interfering with the ecclesiastical and internal government of the said congregation." The court held a hearing on November 23 on this motion, at which both sides presented evidence. On December 19, 1983, the court entered an order denying the adherents' prayer for injunction. On August 16, 1984, we granted adherents an appeal from that order.[7]

Before the appeal had been granted, the Commissioner gave notice to all parties that he would hold a hearing on January 12, 1984, to determine guidelines for fair and orderly procedures to be used in calling and conducting a congregational meeting.

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[7]The adherents applied to this Court for injunctive relief under Code §8.01-626. That application was denied as untimely on January 12, 1984.

Neither the adherents nor their counsel appeared at the hearing. Thereafter, on January 31, 1984, pursuant to notice, the Commissioner presented his proposed guidelines to the court for incorporation into an order. The adherents and their counsel again failed to attend the hearing. The court entered an order on January 31, incorporating the Commissioner's suggested procedures. The order directed the adherents to produce before the Commissioner, with copy to the dissenters, a membership list of the church congregation as of November 30, 1983.

When the adherents failed to produce a membership list, a "show cause" order was entered against them on February 17, 1984.[8]

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[8]On March 6, 1984, the adherents applied to the United States District Court Reid, et al. v. Mazel, et al, Civil Action No. 84-114N), to enjoin Commissioner Mazel from supervising the congregational

(Footnote Continued)

On March 7, after notice, the court gave the adherents until March 9 to produce the membership list. Upon their failure to comply, the court entered a further show cause order against them on March 12.

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(Footnote Continued)
meeting, on First Amendment grounds, pursuant to 42 U.S.C. §1983. The transcript of that proceeding has been made a part of the record on this appeal. It discloses that although the adherents argued on brief that they were victims of racial discrimination by the proposed actions of the Commissioner (he was white and they were black), that argument was expressly abandoned by their counsel at the hearing. The District Court denied the adherents' petition on two grounds: (1) the parties and issues were substantially the same as in Civil Action No. 83-720N, which had been dismissed for lack of federal jurisdiction and not appealed, and therefore res judicata, and (2) the federal courts would not presume that the state courts would decide the case other than in conformity with the Constitution. This decision was appealed to the United States Court of Appeals for the Fourth Circuit, which, on July 19, 1984, overruled Commissioner Mazel's motion to dismiss the appeal, but withheld decision pending further developments in the present appeal in the Virginia courts.

Still refusing to produce the membership list, the adherents called a special meeting of the congregation to be held on March 18, to adopt the proposed constitution and by-laws. On March 15, the court entered an order, on the dissenters' motion, enjoining the holding of a meeting until the court's prior orders had been obeyed.[9]

By orders entered March 22, March 30, April 12 and May 18, the court found Reid and certain adherents in contempt, imposed fines and entered judgments thereon. Those rulings are not before us in the present appeal.

On April 8, the adherents purported to conduct an annual meeting in violation of

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[9]On March 16, we refused the adherents' motion, made under Code §8.01-626, to dissolve the injunction.

the prior orders of the court.[10] The proposed constitution evidently received a majority of the votes cast at the meeting. On April 12, the court entered an order declaring all proceedings at this meeting void. Also on April 12, the court entered a protective order, designating the membership list, when and if produced, as "confidential material" and providing detailed safeguards for its handling.

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[10]The notice of this meeting was contained in a newsletter of April 1. It contained the following exhortation:

> Efforts will probably take place to enjoin [the April 8] meeting. The meeting will be held regardless of an injunction. Every time we attempt to call a meeting, the dissidents try to block it. Whether the Pastor is in jail for obeying the church, the people of God rather than a corrupt order of the court that has no jurisdiction in the operation of church affairs or not, the meeting must proceed. God will be present. In the twelve times that I have been to jail; in Virginia, North Carolina, Georgia and Alabama, every judge and

(Footnote Continued)

The record indicates that no membership list has yet been produced, that no congregational meeting has yet been held under the supervision of the Special Commissioner, and that the church is being governed by the "Executive Council," in violation of the trial court's orders, pending decision in this case.

## II. RELIGIOUS FREEDOM AND THE COURTS

The constitutional guarantees of religious freedom have no deeper roots than in Virginia, where they originated,[11] and

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(Footnote Continued)
every arresting officer who had anything to do with it are dead!!!!!!!!

[11] For a notable discussion of the evolution of James Madison's religious freedom clause of the First Amendment, from George Mason's Virginia Declaration of Rights (1776), through Thomas Jefferson's Bill for Establishing Religious Freedom (introduced 1779, enacted 1786, ultimately incorporated into the Constitution of 1830, art. III, §11, appearing in the present Constitution as part of art. I, §16), see Everson v. Board of Education, 330 U.S. 1,

(Footnote Continued)

nowhere have they been more scrupulously observed.[12] These principles prohibit the civil courts from resolving ecclesiastical disputes which depend upon inquiry into questions of faith or doctrine. Presbyterian Church v. Hull Church, 393 U.S. 440 (1969). The courts have, however, frequently been called upon to resolve disputes concerning the civil and property rights of religious bodies and church members. In such cases, there is a danger

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(Footnote Continued)
11-13 (majority opinion) and 33-42 (Rutledge, J., dissenting)(1946).

[12]Because of this strong tradition, we have, for instance, refused to adopt the "implied trust" theory in favor of hierarchical churches, Presby v. Grace Covenant Church, 214 Va. 500, 201 S.E. 2d 752 (1974), notwithstanding its acceptance by the federal courts and by the majority of our sister states, and we have refused to apply the traditional chancery doctrine of judicial cy-pres, in favor of religious trusts for indefinite beneficiaries. Gallego's Ex'ors. v. The Attorney General, 30 Va. (3 Leigh) 450, 24 Am. Dec. 650 (1832).

that the power of the state may be called upon to aid a faction espousing a particular doctrinal belief, or to "become entangled in essentially religious controversies." Serbian Eastern Orthodox Diocese, etc. v. Milivojevich, 426 U.S. 696, 709 (1976). For this reason, "the First Amendment severely circumscribes the role that civil courts may play in resolving church property disputes." Presbyterian Church v. Hull Church, 393 U.S. at 449.

The threshold inquiry for a court asked to resolve such a dispute must be whether its resolution will project the fact-finder into what the Supreme Court, in Serbian Eastern Orthodox Diocese aptly called a "religious thicket." 426 U.S. at 719. But where church property and civil rights disputes can be decided without reference to questions of faith and doctrine, there is no constitutional

prohibition against their resolution by the civil courts. Jones v. Wolf, 443 U.S. 595 (1979); Maryland & Va. Churches v. Sharpsburg Church, 396 U.S. 367 (1970); Presbyterian Church v. Hull Church, supra; Presby v. Grace Covenant Church, 214 Va. 500, 201 S.E. 2d 752 (1974); Carr v. Union Church of Hopewell, 186 Va. 411, 42 S.E. 2d 840 (1947). "Civil courts do not inhibit free exercise of religion merely by opening their doors to disputes involving church property. And there are neutral principles of law, developed for use in all property disputes, which can be applied without 'establishing' churches to which property is awarded." Presbyterian Church v. Hull, 393 U.S. at 449. Neither the State Constitution nor the First Amendment deprives church members of their right to resort to the courts for the protection of their property rights. Atkins v. Walker, 284 N.C. 306, 200 S.E. 2d 641 (1973), or

their civil rights, Abyssinia Missionary Baptist Ch. v. Nixon, 340 So. 2d 746 (Ala. 1976). The question is simply whether the court can decide the case by reference to neutral principles of law, without reference to issues of faith and doctrine.

III. CHURCH GOVERNANCE AND THE COURTS.

Here, the adherents make no contention that there exists any doctrinal dispute between the contending factions, nor does the record disclose the slightest disagreement among the members of the church in matters of religious belief. Rather, the adherents argue that any judicial inquiry into "church governance," and particulary the appointment of a court officer to "run and oversee" a church meeting, is in itself an unwarranted intrusion by the civil authority into an ecclesiastical area constitutionally exempt from state control. This contention requires analysis in light of the

distinction between hierarchical and congregational churches.[13]

A. HIERARCHICAL CHURCHES.

Hierarchical churches may, and customarily do, establish their own rules for discipline and internal government. They may, and frequently do, establish internal tribunals to decide internal disputes arising in matters of discipline and internal government. These tribunals may be guided by a body of internally-developed canon or ecclesiastical law, sometimes developed over a period of centuries. The decisions of such tribunals

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[13]For this purpose, the term "hierarchical" includes "super-congregational" and "connectional" churches. The distinctions drawn by these terms are immaterial to the subject considered here. "Congregational," which for this purpose includes "independent" churches, is used here merely to describe a religious organization which is governed only by its own congregation and is not subject to any external control.

may be promulgated as matters of faith and are entirely independent of civil authority. One who becomes a member of such a church, by subscribing to its discipline and beliefs, accepts its internal rules and the decisions of its tribunals. For that reason, the civil courts will treat a decision by a governing body or internal tribunal of an hierarchical church as an ecclesiastical determination constitutionally immune from judicial review. To do otherwise would precipitate the civil court into the "religious thicket" of reviewing questions of faith and doctrine even when the issue is merely one of internal governance, because in such churches the resolution of internal government disputes depends upon matters of faith and doctrine. Serbian Eastern Orthodox Diocese, 426 U.S. at 724-25; see also Green v. Lewis, 221 Va. 547, 272 S.E. 2d 181 (1980).

B. CONGREGATIONAL CHURCHES.

Congregational churches, on the other hand, are governed by the will of the majority. Abyssinia Missionary Baptist Ch. v. Nixon, 340 So. 2d 746 (Ala. 1976); Holiman v. Dovers, 236 Ark. 211, 366 S.W. 2d 197, supp. op. on reh'g., 236 Ark. 460, 366 S.W. 2d 203 (1963); Atkins v. Walker, 284 N.C. 306, 200 S.E. 2d 641 (1973). They are free to adopt constitutions, by-laws, and internal rules which will alter or regulate their proceedings, but even these must be enacted by majority vote. And in the absence of such voluntary-adopted rules, each such congregation functions as a pure democracy. When the majority has spoken in a fairly-conducted congregational meeting held after proper notice to the membership, then the governing body of the church has expressed its will and, as in the case of an hierarchical church, its

decision is constitutionally immune from judicial review.

The situation is otherwise, however, when the members of a congregational church merely seek the protection of the court for the purpose of obtaining a fairly-conducted meeting in the first place. Here the analogy to hierarchical churches breaks down because there is no body of ecclesiastical law to invoke, no internal tribunal to appeal to. A memver of a congregational church, seeking the aid of the court in protecting his civil and property rights, may appeal only to the simple and fundamental principles of democratic government which are universally accepted in our society. These principles include the right to reasonable notice, the right to attend and advocate one's views, and the right to an honest count of the votes. Such rights are fundamental to our notions of due process. They are neutral

principles of law, applicable not only to religious bodies, but to public and private lay orgranizations and to civil governments as well. Courts must apply them every day, and can do so without any danger of entering a "religious thicket." Therefore, the authorities which preclude the courts from examining whether an hierarchical church correctly followed its own internal procedures, or correctly applied its canon law, are inapposite to the question before us.

IV. RIGHTS.

The unrefuted evidence presented by the dissenters[14] makes a clear showing of a continuing course of conduct by Reid and his adherents to obstruct the dissenters in

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[14]At all hearings which have been made a part of this record, the adherents either presented no evidence or failed to attend. Thus, the only state of facts before us is that which is stipulated or was adduced by the dissenters.

the exercise of their civil rights mentioned above. They have been persistently "silenced" and excluded from voting. Meetings have been called upon improper notice, votes favorable to the dissenters suppressed, and unauthorized absentee ballots counted against them. All efforts by the court to enable the congregation to hold a free and fair meeting, in which the majority could express its will, have been ignored.

It is also apparent that the dissenters' property rights, as well as their civil rights, are threatened by the adherents' proceedings. The proposed constitution purports to remove control of the church property from the congregation's elected trustees and to vest it in a "property chairperson." It removes all authority of the congregation to vote on property matters, and indeed on any "matter of controversy," and vests sole authority

in an "Executive Council." The council would take over "matters of church discipline" and would itself become the "membership committee" and "the administrative body" of the church. The pastor becomes "the executive officer of the church." The pastor may only be removed on recommendation of the executive council. The constitution is silent as to how, and by whom, the members of the executive council are to be selected.

We therefore conclude that the dissenters have presented a proper case for the intervention of an equity court for the protection of their civil and property rights, and that such intervention does not infringe the guarantees of religious freedom contained in art. I, §16 of the Constitution of Virginia and in the First Amendment to the Constitution of the United States.

V. REMEDIES.

The adherents conceded in oral argument at the bar of this Court that the trial court might properly appoint a commissioner to attend a congregational meeting as an observer, with authority to report to the court thereafter. They contend, however, that authorizing the commissioner to "run and oversee" the meeting is too intrusive an assertion of judicial power into the exercise of religion to comport with the constitutional guarantees. They argue that the interface between civil authority and religious freedom occurs in such a sensitive area that the court should fashion the least intrusive remedy which would avail to protect the dissenters' rights. This could be accomplished, the adherents say, in either of two ways: (1) the dissenters could attend a meeting, abide the result, call for a "division" of the membership, and then apply to the court for allocation

of the church property to the winning faction under Code §57-9;[15] or (2) the its

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[15] §57.9. How property rights determined on division of church or society.--
If a division has heretofore occurred or shall hereafter occur in a church or religious society, to which any such congregation is attached, the communicants, pewholders, and pewowners of such congregation, over eighteen years of age, may, by a vote of a majority of the whole number, determine to which branch of the church or society such congregation shall thereafter belong. Such determination shall be reported to the circuit court of the county, or circuit or corporation court of the city, wherein the property held in trust for such congregation or the greater part thereof is; and if the determination be approved by the court, it shall be so entered in its chancery order book, and shall be conclusive as to the title to and control of any property held in trust for such congregation, and be respected and enforced accordingly in all of the courts of this State. If a division has heretofore occurred or shall hereafter occur in a congregation, which in its organization and government is a church or society entirely independent of any other church or general society, a majority of the members of such congregation, entitled to vote by its constitution as existing at the time of the division, or where it has no written constitution, entitled to vote by its ordinary practice of custom, may

(Footnote Continued)

adoption, and it will be its terms provide for their disenfranchisement, the remedy provided by the statute would be a mirage, which fades if pursued.

There may, indeed, be cases in which the court should begin with a more cautious exercise of its power, appointing an observer initially, and proceeding to stronger remedies only if the first steps prove futile, but this is surely not such a case. Counsel represented to the federal court on October 27, 1983, that they had then been trying for two years to secure agreement of the factions to name some impartial person to preside at a congregational meeting, but that the

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(Footnote Continued)
decide the right, title and control of all property held in trust for such congregation. Their decision shall be reported to such court, and if approved by it, shall be so entered as aforesaid, and shall be final as to such right of property so held.

bitterness of the dispute precluded agreement. The federal judge requested counsel to continue their efforts to negotiate such an agreement, and they promised to use their best efforts, but these have evidently been unavailing.f As stated above, Reid and his adherents have established a consistent track record of truculent defiance, not only toward the dissenters, but also toward all judicial proceedings that have affected them. There is no requirement that the court restrict its intervention to the obviously futile exercise of appointing an observer, receiving his report, invalidating a meeting, appointing another observer, receiving his report, invalidating another meeting, ad infinitum. Any objective analysis of the record before us indicates that such a scenario would be the probable outcome if the court did no more than appoint an observer.

There is precedent for the appointment of a judicial officer to oversee a congregational meeting, and actually to preside, if necessary, in a proper case. Burnett v. Banks, 130 Cal. App. 2d 631, 279 P.2d 579 (1955); Willis v. Davis, 323 S.W. 2d 847 (Ky. Ct. App. 1959); Horodeckyi v. Horodniak, 16 Misc. 2d 865, 182 N.Y.S. 2d 280 (1958); Waters v. Hargest, 593 S.W. 2d 364 (Tex. Civ. App. 1979). We hold that the trial court's action was fully justified by the record before us. The order appealed from will be

Affirmed.

Thomas, J., concurring in part and dissenting in part.

MILTON A. REID, ET AL.

Record No. 840057

v.

ULYSSES GHOLSON

Thomas, J., concurring in part and dissenting in part.

The majority opinion is important for the guidance of our courts and our citizens. It confirms, and rightly so, the power of the courts to intervene in church-based disputes where property rights and civil rights of church members are threatened. I agree with virtually all of what the majority has written. However, I think that this Court should not have approved the remedy devised by the trial court as the threshold response to this delicate problem.

The trial court appointed a Commissioner in Chancery and a uniformed deputy to, in effect, take over the operation of the church meeting. That such a remedy might ultimately be required I do not dispute. However, I think that what happened here was far too intrusive as a

first-level response. The trial court should have shown more restraint. The majority opinion should have made clear to the trial courts that where courts are called upon to intervene in church disputes the overriding principle in the area of remedies must be restraint.

Religious freedom is one of the reasons for the existence of the United States. Many of our ancestors overcame great hazards to reach the freedoms offered by our shores. It is only fitting and proper then that courts in America should be cautious, careful, and restrained when called upon to use the secular power of the state to resolve disputes that rage within churches. Without such caution, the brute strength of the state could inadvertently trample upon the delicate balance struck by our founding fathers between issues of church and issues of state.

The majority's description of the powers of the Commissioner is incomplete. He certainly was empowered to "run and oversee" the church meeting, to count the vote, and to report to the court. But his powers went further than that. He was directed by the trial court to limit voting to church members over the age of eighteen. He was empowered to decide who qualified as a church member and who did not. He was authorized to select a presiding officer or to preside himself. He was directed by the trial court to limit all speaking to five minutes per person. He was permitted to select tellers to assist in vote counting. He was granted sole discretion, in the event the business was not concluded in one meeting, to call another meeting at a time and place he deemed appropriate.

In short, as a first response to this dispute, the trial court ordered that the church meeting be taken over and run by the

state. This remedy was much more than necessary. The majority concedes that in cases of this kind the courts "must exercise great restraint." Yet, the majority approved this intrusive remedy as a threshold response to this dispute. The majority says this remedy was justified for at least three reasons: First, because the minister and his adherents had established a track record of truculent defiance; second, because the disputing factions could not agree upon an impartial person to run the meeting; and third, because the court might have started itself along an endless path of appointing observers, invalidating improper meeting results, then appointing another observer. These explanations are insufficient to me to justify the level of intrusion that was ordered by the trial court.

In almost every church case that makes its way into the courts, the parties will

be sharply divided and in hot debate. At least one side to the dispute is likely to believe that separation of church and state means that the courts have no role to play in church affairs. Such a belief may manifest itself in a defiant attitude. The courts, of course, will not condone such an attitude, however, its existence does not automatically mean that the remedy fashioned by the court should be any less restrained than it would have been had all the litigants been cheerful and pleasant. I am more concerned with striking the proper balance between church and state than showing a defiant minister the full scope of a trial court's power; this is surely true at the threshold.

I think the appropriate remedy would have been to send in the Commissioner as the "eyes and ears" of the court but otherwise to allow the church to operate as it customarily operated. This means that

if the minister normally presides at a church meeting let him preside--under the watchful eye of the court. The selection of an impartial person to run the church meeting would not be necessarily under my threshold approach to this problem. The Commissioner would have a passive role to observe and report back to the court. If the report is that the events leading up to the meeting, e.g., notice, and the conduct of the meeting, e.g., speaking and voting, were fair, then the court could step aside. If the report is otherwise, the court could fashion a more intrusive remedy.

By my approach, there is no risk that the court would embroil itself in a never ending series of appointments of passive observers. If given the chance to conduct a fair hearing under the eyes and ears of the court the minister fails to do so, he would have to face escalating intrusions until a fair meeting was conducted.

My approach would pay proper respect to religious freedom and to the power of the courts to intervene in disputes of this kind. It would make the trial courts start with the least intrusive remedy and move up notch by notch to more intrusive remedies. My approach would make restraint the guiding principle in resolving church-based disputes.

Although this one dissent cannot change the majority result, I hope the trial courts will not take the majority opinion to mean that wherever there exists a serious dispute within a church, that it is proper to send a Commissioner and a deputy into the sanctuary to take charge. Such a first-level remedy gives rough treatment to so precious and delicate a right as freedom of religion.

APPENDIX B

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

ULYSSES GHOLSON, et al., etc.,

Petitioners,

vs.

MILTON A. REID, etc., et al.,

Defendants.

IN CHANCERY NO. C83-1705

October 27, 1983

ORDER

THIS CAUSE came on to be heard upon the Petition of Ulysses Gholson and Floyd Lewis, Individually, Trustees and as members in good and regular standing of New Calvary Baptist Church, Norfolk, Virginia, praying for the appointment of a Special Commissioner to run and oversee the annual meeting of the members of New Calvary Baptist Church, Norfolk, Virginia, scheduled to be held on Thursday, October 27, 1983, at 7:00 p.m., at the church

premises located at 800 East Virginia Beach Boulevard, Norfolk, Virginia; the evidence of witnesses heard ore tenus on behalf of the Petitioners, and was argued by counsel.

UPON CONSIDERATION WHEREOF, it appearing to the Court that at the said annual meeting of the congregation of New Calvary Baptist Church, the members will be called upon to decide the right, title and control of all property held by the trustees in trust for such congregation, and that substantial justice will be promoted b a fair and impartial annual meeting.

It further appearing to the Court that since the filing of this Petition before the Court, that the Defendants announted at the 11:00 o'clock a.m. Worship Service of New Calvary Baptist Church, Norfolk, Virginia, on October 23, 1983, that a special meeting of the members of New Calvary Baptist Church would be held on the

same day immediately following the Worship Service for the purpose of considering and voting upon a Code of Conduct and an agenda and procedures for the annual meeting scheduled for October 27, 1983. It further appearing to the Court that a meeting of the members of said religious organization was held on October 23, 1983 immediately following the Worship Service and that certain items were presented and voted upon. It further appearing to the Court that the notice of the special meeting of October 23, 1983 is an invalid notice (see Order of the Court entered on March 7, 1983 in Chancery No. C82-1860), it is therefore

ORDERED, ADJUDGED and DECREED that in the interest of having a fair and impartial annual meeting of the members of New Calvary Baptist Church, Norfolk, Virginia, on October 27, 1983, the Court hereby appoints William Mazel, a Commissioner in Chancery, as a Special Commissioner, who is

hereby authorized and ordered to run and oversee the aforesaid annual meeting, to take an accurate count of the voting on various matters considered and voted upon at said meeting, and to thereafter report to this Court in writing the results of said meeting, including any irregularities that may occur, it is further

ORDERED, ADJUDGED and DECREED that the announcement during the 11:00 a.m. Worship Service of New Calvary Baptist Church on Sunday, October 23, 1983, that a special meeting of the members of said church would be held on the same day immediately following the Worship Service is an invalid notice, and all proceedings thereunder at said special meeting are hereby declared void and illegal.

Deputy Sheriff Gary Benn is assigned by the Court to accompany Mr. Mazel and to receive such orders from him as appear necessary.

ENTERED: 10/27/83
E.L. Ryan, Jr., Judge

APPENDIX C

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

ULYSSES GHOLSON and FLOYD LEWIS, Individually, Trustees and as members in good regular standing of New Calvary Baptist Church, Norfolk, Virginia,

Petitioners,

vs. IN CHANCERY NO.

MILTON A. REID, Individually and as Pastor, New Calvary Baptist Church, Norfolk, Virginia, 1909 Arlington Avenue, Norfolk, Virginia,

and

BRISCOE BODDIE, Individually and as member of the Deacon Board, New Calvary Baptist Church, Norfolk, Virginia, 570 River Creek Rd., Chesapeake, VA

and

KENNETH BELLAMY, Individually and as member of the Deacon Board, New Calvary Baptist Church, Norfok, Virginia, 1711 Harmon Street, Norfolk, VA,

and

ST. PAUL LEWIS, Individually and as member of the Deacon Board, New Calvary Baptist Church, Norfolk, Virginia, 3233 Bruno Drive, Chesapeake, Virgnia,

and

JAMES BRIDGERS, Individually and as member of the Deacon Board, New Calvary Baptist Church, Norfolk, Virginia, 2156 Allison Drive, Chesapeake, Virginia,

Defendants.

PETITION

NOW COMES Ulysses Gholson and Floyd Lewis, by counsel, and respectfully represent as follows:

1. That they are two of the duly elected and appointed Trustees of New Calvary Baptist Church, Norfolk, Virginia, having been appointed by Order of this Court, entered on May 15, 1980 in Chancery Order No. C848-80A and duly of record in the Clerk's office of this Court in Deed Book 1536, at Page 871. That your Petitioners were further recognized as Trustees of said church by Order of this Court, entered on June 11, 1982, in Chancery Order No. C801-82A (see attached copies of said Orders, Exhibits "A" and "B").

2. That by notice mailed to the members of New Calvary Baptist Church on September 7, 1983, the Defendants have notified the congregation of New Calvary Baptist Church that the annual meeting of the members of New Calvary Baptist Church will be held on Thursday, October 27, 1983 (see attached copy of notice, Exhibit "C")

3. That at the scheduled annual meeting of New Calvary Baptist Church the Defendants propose to present a Constitution and By-Laws (see copy of proposed Constitution and By-Laws, Exhibit "D") that will take away from the congregation the power to make decisions on matters which, by tradition and ordinary practice of customs, have been made by the congregation.

4. That in past annual and special meetings of the members of New Calvary Baptist Church, Norfolk, Virginia, the Defendants have denied your Petitioners,

who are "members in good and regular standing" and others members who are "members in good and regular standing," the right to vote and participate in said meetings.

5. That in the May 1, 1983 special meeting of the members of New Calvary Baptist Church, Norfolk, Virginia, the Defendants allowed voting by "Absentee Card" when voting by "Absentee Card" at either the annual or special meetings of the members of said church has not been approved by the members of said church.

6. That in the January 30, 1983 special meeting of the members of New Calvary Baptist Church, Norfolk, Virginia, the Defendants silenced your Petitioner, Ulysses Gholson, and seventeen (17) other members of said church, and that notwithstanding the fact that by Order of this Court, entered on March 7, 1983, the January 30, 1983 special meeting of the

members of New Calvary Baptist Church, Norfolk, Virginia, was declared void and illegal, the Defendant continue to treat your Petitioner, Ulysses Gholson, and the seventeen (17) other members as being silenced and, therefore, not permitted to participate and vote at any meetings of the members of New Calvary Baptist Church, Norfolk, Virginia (see copy of the March 7, 1983 Order of this Court attached hereto as Exhibit "E").

7. That at the May 1, 1983 special meeting of the members of New Calvary Baptist Church, Norfolk, Virginia, the Defendants did not make an accurate count of the members voting for and against various matters voted upon until long after these matters had been voted upon causing considerable chaos among the members.

WHEREFORE, your Petitioners pray that in the interest of having a fair and impartial annual meeting of the members of

New Calvary Baptist Church, Norfolk, Virginia, on October 27, 1983, the Court appoint a Special Commissioner to run and oversee the aforesaid meeting, to take an accurate count of the voting on the various matters considered and voted upon at said meeting, and to thereafter report to this Court in writing the results of said meeting, including any irregularities that may occur.

ULYSSES GHOLSON and FLOYD LEWIS, Individually, Trustees and as members in good and regular standing of New Calvary Baptist Church, Norfolk, Virginia

By _____
Of Counsel:

Appendix D

JAMES BRIDGERS, Individually and
as member of the Deacon Board,
New Calvary Baptist Church,
Norfolk, Virginia
2156 Allison Drive
Chesapeake, Virginia,

Defendants.

NOTICE

TAKE NOTICE THAT, on the 26th day of October, 1983, at 9:00 a.m., or as soon thereafter as counsel can be heard, at the Circuit Court of the City of Norfolk, Virginia, I will move for an Order appointing a Special Commissioner to preside at the October 27, 1983 annual meeting of the members of New Calvary Baptist Church, 800 East Virginia Beach Boulevard, Norfolk, Virginia in accordance with the prayer of the attached Petition.

ULYSSES GHOLSON and
FLOYD LEWIS, Individually,
Trustees and as members in
good and regular standing
of New Calvary Baptist
Church, Norfolk, Virginia

By _____
Of Counsel

APPENDIX E

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

| | | |
|---|---|---|
| MATTHEW TOWNS, et al, etc., | : | |
| Plaintiffs, | : | CHANCERY NO. C82-1860 |
| v. | : | |
| MILTON A. REID, et al, etc. | : | |
| Defendants. | : | |

PETITION FOR INJUNCTION

1. A suit entitled Ulysses Gholson and Floyd Lewis vs. Milton A. Reid, Briscoe Boddie, Kenneth Bellamy, St. Paul Lewis, and James Bridgers, Chancery No. C83-1705, was filed in this court on October 21, 1983, which ask [sic] for the appointment of a special commissioner to run and oversee the annual meeting for New Calvary Baptist Church which was scheduled for October 27, 1983.

2. On October 27, 1983, a hearing was held and an Exparte Order was entered which appointed William Mazell, a Commissioner in

Chancery, to run and oversee the annual meeting of the members of New Calvary Baptist Church scheduled for October 17, 1983.

3. The above-mentioned suit was filed less than a week before the scheduled meeting of October 17, 1983 and a hearing was scheduled for October 26, 1983, before all of the named defendants had been served with process.

4. The attorney for the defendants received a call from the attorney for the plaintiffs, Edward Delk, Esquire, on the morning of October 25, 1983, asking him to appeark in court with elss than one hour's notice because he planned to ask that an order be entered appointing a special commissioner to preside over the annual meeting scheduled for October 27, 1983.

5. The attorney for the defendants appeared and objected to any proceedings until all of the defendants had been served

and until he had had an opportunity to meet and discuss the suit with his clients.

6. The Honorable E.L. Ryan, Jr. continued the hearing until the next morning in order to determine whether or not all of the defendants had been served. Judge Ryan indicated that he intended to appoint a commissioner to preside over the meeting if all of the defendants had been served. On the afternoon of October 26, 1983, the defendants removed the case to the United States District Court, Norfolk, Virginia.

7. At approximately 11:30 a.m. on October 27, 1983, the attorney for defendants received a call from a deputy clerk of the United States District Court to appear at 2:00 p.m. for a hearing on a motion which had not yet been filed to remand the case to the Circuit Court. At 2:00 p.m., the Honorable J. Calvitt Clarke, Jr. remanded the case to the Circuit Court

and announced that Judge Ryan was waiting to hear the case.

8. The hearing was held in the Norfolk Circuit on the afternoon of October 17, 1983 without any notice from the Circuit Court or the attorney for the plaintiffs to the defendants and the Exparte Order was entered appointing the Commissioner Mazell to preside over the meeting. (Exhibit A).

9. Commissioner Mazel arrived at New Calvary Baptist Church at approximately 7:00 p.m., along with Deputy Sheriff, Gary Benns. The attorney for the plaintiffs was not present. Following a meeting with the attorney for defendants, Commissioner Mazell agreed that the church meeting should be posponed until a suitable format and procedure could be worked out for conducting the meeting. Accordingly, the meeting was adjourned.

10. This case is currently on appeal before the Supreme Court of Virginia and the fundamental issues in this case are the same as those in the new suit filed on October 21, 1983. It raises the same legal issues which are not on appeal in this case: What is the authority of the Courts to interfere with the operation of a church where property rights are not involved.

11. The relief requested in the new suit filed on October 21, 1983, is the same as that which was requested in this case on October 12, 1983 and was denied by the Honorable Alfred W. Whitehurst (Exhibit B).

12. If the Court does not enjoin the commissioner from acting, it will totally undermine the defendants' appeal which is now pending before the Supreme Court of the Virginia in as much as, that appeal raises the issue concerning the extent to which the Courts can intervene in resolving ecclesiatical matters when there is no

dispute over property and thereby cause irrevocable harm to defendants.

WHEREFORE, the defendants pray that this Court enjoin Commissioner Mazell from taking any action to preside over any meeting of the congregation of New Calvary Baptist Church until the Supreme Court of Virginia has had an opportunity to rule on the appeal of this case which is now pending before it.

MILTON A. REID, et al.,

by: _____

APPENDIX F

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

| | | |
|---|---|---|
| Ulysses Gholson, et al, | : | |
| Petitioner, | : | |
| v. | : | Chancery No. |
| Milton A. Reid, et al., | : | C83-1705 |
| Defendants. | : | |
| | : | and |
| Matthew Towns, et al., | : | |
| Plaintiffs, | : | Chancery No. |
| v. | : | 82-1860 |
| Milton A. Reid, et al., | : | |
| Defendants. | : | |

ORDER

This cause came or [sic] to be heard upon the motion of the defendants Milton A. Reid, et al., to dismiss Ulysses Gholson, et al., vs. Milton A. Reid, et al., Chancery No. C83-1705, on the grounds of prior suit pending and alternatively for consolidation of Ulysses Gholson, et al.,

Chancery No. C83-1705, with the case of Matthew Towns, et al. vs. Milton A. Reid, et al, Chancery No. 82-1860 and a petition to enjoin William Mazel, a Commissioner in Chancery, from running and overseeing the annual meeting of the church.

It appearing to the court that the defendants are entitled to releif. The case of Ulysses Gholson, et al., Chancery No. C83-1705, is ordered consolidated with Matthew Towns, et al, Chancery No. 82-1680 and Commissioner William Mazel is enjoined from interfering with the internal government and ecclesiatical affairs of New Calvary Baptist Church.

Enter this __ Day of December,1983.

_____

JUDGE

Denied: E.L. Ryan

12/19/83

APPENDIX G

Corrected Copy

SUPREME COURT OF VIRGINIA

Milton A. Reid, Briscoe Boddie,
Kenneth Bellamy, St. Paul Lewis,
William Spruill, Jr., James Bridgers,
and E.J. Goodwin,
Appellants,

against Record No. 840057
Circuit Court No.C-83-1705

Ulysses Gholson and Floyd Lewis,

Appellees.

From the Circuit Court of the City of

Norfolk

CERTIFICATE

Pursuant to Rule 5:30 of the Rules of the Supreme Court of Virginia, I, Allen L. Lucy, Clerk of the said Court, do hereby certify that on August 16, 1984, an appeal was awarded from a judgment rendered by the court below on December 19, 1983, in the suit therein depending under the short style of Ulysses Gholson, et al. v. Milton A. Reid, et al.

Appeal bond is required in the penalty of $500 in conformity with Code §8.01-676.

This certificate, constituting the summons on appeal, was this day mailed to the court below and to

James F. Gay, 1317 East Brambleton Avenue, Norfolk, Virginia 23504, Counsel for Appellants

Edward Delk, 305 Greater Norfolk Plaza, 555 Fenchurch Street, Norfolk, Virginia 235-2883, Counsel for Appellees

Given under my hand this 17th day of August, 1984.

Allen L. Lucy, Clerk

## APPENDIX H

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

----------x

ULYSSES GHOLSON, et al.,

Petitioners,

vs.

MILTON A. REID, et al.,
Defendants.

----------x

PROCEEDINGS TAKEN BEFORE: Hon. Alfred W. Whitehurst, Judge

March 22, 1984
9:30 a.m.

APPEARANCES: MR. EDWARD DELK,
Attorney appearing in behalf of the Petitioners

MR. JAMES F. GAY,
Attorney appearing in behalf of the defendants

* * *

And the side issues about various reasons for the list it just seems to me that is not real. It is not appropriate. It is just not accurate. And for the rights and duties of these people to be denied the Court has a function, a duty. And I can reach no other conclusion but that the people before the Court are in contempt of court. I am going to take this relatively light action. I hope it will accomplish something. [p. 12] There have been many delays. At this time I am going to hope I can avoid jail or that type of disposition. I am going to make the disposition in reference to the Minister--he is the leader--Reverend Reid. I am going to find him in contempt and impose a hundred dollar fine and the others a twenty-five dollar fine for contempt. And, of course, that is not to come from

the church, but it is to them personally. And, of course, each day is a new violation when the Order that is very clear is not complied with. So I am going to make the disposition of imposing that find for contempt. And, of course, it is a personal fine and the fact of each day is a new violation. And the property rights of these people--some of the people are no longer living--but that that church meet and that they in a duly organized meeting that they speak and that they not be silenced but that they speak and their will be worked out. All right. I will make that disposition.

* * *

APPENDIX I

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

---

ULYSSES GHOLSON, etc., et al.,

Plaintiffs,

VS. IN CHANCERY
No.C83-1705

MILTON A. REID, etc. et al.,

Defendants.

---

TRANSCRIPT OF PROCEEDINGS

DATE: March 30, 1984

BEFORE: The Honorable Alfred W. Whitehurst

APPEARANCES:
EDWARD DELK, ESQ.
555 Fenchurch Street, Suite 305
Norfolk, Virginia,
Attorney for the Plaintiffs

JAMES F. GAY, ESQ.
1317 E. Brambleton Avenue
Norfolk, Virginia,
Attorney for the Defendants

* * *

Now, so that the Court can get out of it and the church meet and the list handed over, it would seem that I should go ahead--we're back here today, and it does go on and on. And March a year ago I was talking.

I'm going to find that, of course, it is in contempt of Court, and let it be one thousand dollars a day. And he can purge it. It's within his authority to do that. And if it's turned over today, there's no thousand dollars' fine today. If it isn't turned over today, the list, there's a thousand dollars' fine today and each day that follows.

So I'll make that disposition.

* * *

APPENDIX J

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

---

ULYSSES GHOLSON, et al., etc.,

IN CHANCERY

Petitioners, No.C83-1705

vs.

MILTON A. REID, etc., et al.,

Defendants.

JUDGMENT

THIS CAUSE came on this day to be heard upon the pleadings duly filed; upon the evidence heard ore tenus before the Court; upon notice to all parties; and was argued by counsel.

UPON CONSIDERATION WHEREOF, the Court makes the following findings of fact, decisions and rulings in this matter:

1. That on March 7, 1984, this Court entered an Order commanding the Defendants

to produce before William Mazel, Commissioner in Chancery, with a copy of it to Edward Delk, the Petitioners' attorney, a membership list of all members of the New Calvary Baptist Church, 800 East Virginia Beach Boulevard, Norfolk, Virginia, as of November 30, 1983, setting forth their names, street address, city, state and zip code by March 9, 1984.

2. That the Defendants failed to produce said membership list on March 9, 1984 in violation of the March 7, 1984 Order.

3. That on March 12, 1984, upon notice to all parties, this Court issues a rule against the Defendants, which was duly served upon each of them, summoning them to appear before this Court on the 22nd day of March, 1984, at 9:30 a.m. o'clock, and show cause, if any they can, why they should not be adjudged in contempt of Court for their failure to produce before William Mazel,

Commissioner in Chancery, with a copy of it to Edward Delk, the Petitioners' attorney, a membership list of all members of the New Calvary Baptist Church, 800 East Virginia Beach Boulevard, Norfolk, Virginia, as of November 30, 1983, setting forth their names, street address, city, state and zip code.

4. That on March 22, 1984, upon the evidence heard ore tenus before the Court on behalf of the Defendants and was argued by counsel, this Court found the Defendant, Milton A. Reid, in contempt of Court and assessed a fine against him of $100.00 per day for each day he failed to comply with the March 7, 1984 order of this Court by producing the said membership list.

5. That on March 22, 1984, upon the evidence heard ore tenus before the Court on behalf of the Petitioners, upon the evidence heard ore tenus before the Court on behalf of the Defendants and was argued

by counsel, this Court found each of the Defendants, Briscoe Boddie, Kenneth Bellamy, St. Paul Lewis, and James Bridgers, in contempt of court and assessed a fine against each of them of $25.00 per day for each day the [sic] failed to comply with the March 7, 1984 order of this Court by producing the said membership list.

6. That on March 30, 1984, upon the evidence heard ore tenus before the Court on behalf of the Petitioners, upon the evidence heard ore tenus before the Court on behalf of the Defendants and was argued by counsel, this Court again found the Defendant, Milton A. Reid, in contempt of court and increased the fine against him from $100.00 per day to $1,000.00 per day for each day he failed to comply with the March 7, 1984 Order of this Court by producing the said membership list.

7. That notwithstanding the aforesaid contempt convictions and fines, the

Defendants have not purged themselves by complying with the March 7, 1984 Order of this Court by producing the said membership list, it is, therefore,

ADJUDGED, ORDERED AND DECREED that Judgment is entered against the Defendant, Milton A. Reid, in favor of the Commonwealth of Virginia in the sum of $14,800.00, it is further

ADJUDGED, ORDERED AND DECREED that Judgment is entered against each of the Defendants, Briscoe Boddie, Kenneth Bellamy, St. Paul Lewis and James Bridgers, in favor of the Commonwealth of Virginia in the sum of $550.00.

Execution of this Judgment shall be made forthwith.

Fines which may be assessed against Defendants for future contempt violations are not covered by this Judgment.

Should the Defendants appeal from this Judgment, an appeal bond in the amount of

$15,000.00 for the defendant Milton A. Reid and in the amount of $600.00 each for the other defendants, with corporate surety approved by the Clerk of this Court, shall be posted.

ENTER: 4/12/84

Alfred W. Whitehurst

Judge

I ask for this:

_____

Counsel for Petitioners

APPENDIX K

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

ULYSSES GHOLSON, et al., etc.

Petitioners, IN CHANCERY

v. C83-1705

MILTON A. REID, etc., et al.,

Defendants.

JUDGMENT

THIS CAUSE came on this day to be heard upon the pleadings duly filed; upon the evidence heard ore tenus before the Court; upon notice to all parties; and was argued by counsel.

UPON CONSIDERATION WHEREOF, the Court makes the following findings of fact, decisions and rulings in this matter:

1. That on March 7, 1984, this Court entered an Order commanding the Defendants to produce before William Mazel, Commissioner in Chancery, with a copy of it

to Edward Delk, the Petitionerss' attorney, a membership list of all members of the New Calvary Baptist Church, 800 East Virginia Beach Boulevard, Norfolk, Virginia, as of November 30, 1983, setting forth their names, street address, city, state and zip ccde by March 9, 1984.

2. That the Defendants failed to produce the said membership list on March 9, 1984 in violation of the March 7, 1984 Order.

3. That on March 12, 1984, upon notice to all parties this Court issued a rule against the Defendants, which was duly served upon each of them, summoning them to appear before the Court on the 22nd day of March, 1984 at 9:30 a.m. o'clock, and show cause, if any they can, why they should not be adjudged in contempt of court for their failure to produce before William Mazel, Commissioner in Chancery, with a copy of it to Edward Delk, the Petitioners' attorney,

a membership list of all members of the New Calvary Baptist Church, 800 East Virginia Beach Boulevard, Norfolk, Virginia, as of November 30, 1983, setting forth their names, street address, city, state and zip code.

4. That on March 22, 1984, upon the evidence heard ore tenus before the Court on behalf of the Petitioners, upon the evidence heard ore tenus before the Court on behalf of the Defendants and was argued by counsel, this Court found the Defendant, Milton in contempt of court and assessed a fine against him of $100.00 per day for each day he failed to comply with the March 7, 1984 Order of this Court by producing the said membership list.

5. That on March 22, 1984, upon the evidence heard ore tenus before the Court on behalf of the Petitioners, upon the evidence heard ore tenus before the Court on behalf of the Defendants and was argued

by counsel, this Court found each of the Defendants, Briscoe Boddie, Kenneth Bellamy, St. Paul Lewis, and James Bridgers, in contempt of court and assessed a fine against each of them of $25.00 per day for each day the [sic] failed to comply with the March 7, 1984 order of this Court by producing the said membership list.

6. That on March 30, 1984, upon the evidence heard ore tenus before the Court on behalf of the Petitioners, upon the evidence heard ore tenus before the Court on behalf of the Defendants and was argued by counsel, this Court again found the Defendant, Milton A. Reid, in contempt of court and increased the fine against him from $100.00 per day to $1,000.00 per day for each day he failed to comply with the March 7, 1984 Order of this Court by producing the said membership list.

7. That notwithstanding the aforesaid contempt convictions and fines, the

Defendants have not purged themselves by complying with the March 7, 1984 Order of this Court by producing the said membership list, it is, therefore,

ADJUDGED, ORDERED AND DECREED that Judgment is entered against the Defendant, Milton A. Reid, in favor of the Commonwealth of Virginia in the sum of $36,000.00, it is further

ADJUDGED, ORDERED AND DECREED that Judgment is entered against each of the Defendants, Briscoe Boddie, Kenneth Bellamy, St. Paul Lewis and James Bridgers, in favor of the Commonwealth of Virginia in the sum of $900.00.

Execution of this Judgment shall be made forthwith.

Fines which may be assessed against Defendants for future contempt violations are not covered by this Judgment.

Should the Defendants appeal from this Judgment, an appeal bond in the amount of

$40,000.00 for the defendant Milton A. Reid and in the amount of $1,000.00 each for the other defendants, with corporate surety approved by the Clerk of this Court, shall be posted.

ENTER: 5/18/84

Alfred W. Whitehurst

Judge

I ask for this:

_____

Counsel for Petitioners

APPENDIX L

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

ULYSSES GHOLSON and FLOYD LEWIS, et al.

IN CHANCERY

Complainants, No.C83-1705

v.

MILTON A. REID, et al.,

Defendants.

AMENDED ORDER

THIS CAUSE came on this day to be heard upon the pleadings duly filed; upon the evidence heard ore tenus by the Court; upon the Decree of Reference to William Mazel, Commissioner in Chancery of this Court, dated October 27, 1983; upon hearings before the Court on October 27, 1983 and November 23, 1983, wherein evidence was taken ore tenus; upon a hearing before the Court by the attorneys of record on the 9th day of December, 1983;

upon the Notice of a hearing before the Commissioner in Chancery on January 12, 1984; upon said hearing; upon notice to all parties; and was argued by counsel.

And it appearing to the Court that the previous Order of the court entered on the 27th day of October, 1983, is proper and correct, it is

ADJUDGED and ORDERED:

1. That the annual meeting of the membership of the New Calvary Baptist Church shall be duly called and held on the 29th day of March, 1984, at 7:00 p.m. in the sanctuary of the church by the respective officers of the church and shall be supervised and reported on by the Commissioner in Chancery to whom this matter was referred to oversee a proper and fair election.

2. That voting members of the congregation shall be over the age of eighteen years.

3. That the Defendants shall produce before the Commissioner in Chancery, with a copy of it to the Complainants' attorney, a membership list of all members of the church, as of November 30, 1983, setting forth their names, street address, city, state and zip code. In order to satisfy the requirements of this paragraph, the Defendants shall do the following: (1) Ascertain the name or names of the church official[s] who has custody of the said membership list; (2) make demand upon said official[s] for a certified copy of the membership list so Defendants can comply with this paragraph of this Order; and (3) deliver the certified copy of membership list to the Clerk of this Court on Friday, March 9, 1984, or file a written report, under oath, with the Clerk of this Court on Friday, March 9, 1984, setting forth the name[s] of the church official[s] who has custody of said membership list, the date

Defendants made demand on said church official[s] for a certified copy of the membership list, and the date and name[s] of the church official[s] who refused to deliver to the Defendants a copy of the membership list.

4. That the complainants' shall have an opportunity to review said list and to object to any member thereon, which objection shall be sustained or overruled by the Commissioner in Chancery, and such objection shall be made in writing to the Commissioner in Chancery within ten (10) days of receipt of said list.

5. That the parties shall furnish the Commissioner in Chancery, within ten (10) days of the entry of this Order, to-wit: on the 10th day of February, 1984, and subject to his approval, a draft of a written notice to be mailed to all members of the congregation under the signature of the

Secretary of the congregation, setting forth the following information:

(a) the date, time and place of said meeting;

(b) the business to be brought before the meeting, including copies of proposed resolutions;

(c) that only members, as of November 30, 1983 and eighteen years of age, or older, shall be authorized to attend and vote at said meeting;

(d) that no proxy voting shall be permitted at said meeting;

(e) that each member of the congregation shall have a right to speak on each motion if they so elect, but such discussion shall be limited to five minutes per person;

(f) that the meeting will be conducted under the supervision of William Mazel, Commissioner in Chancery; and

(g) that all voting will be made by show of hands.

6. That the notice with the resolutions attached shall be mailed on March 12, 1984, postage pre-paid by the congregation, to all members of the congregation and such action shall be certified to by the Secretary of the congregation to the Commissioner in Chancery.

In addition to the notice which shall be mailed, with resolutions attached thereto, to March 12, 1984, such notice shall be read at the church services on two successive Sundays, to wit: March 18, 1984 and March 25, 1984. The reading of such notice shall be certified to by the Secretary of the congregation and such certification shall be delivered to the Commissioner in Chancery prior to the meeting.

7. That the Complainants and the Defendant shall submit to the Commissioner in Chancery, within fifteen (15) days of entry of this Order, to-wit: on the 15th day of February, 1984, in writing, a copy of all resolutions desired to be brought up at such meeting, and that no resoultions [sic] or motions shall be made at this meeting other than previously placed upon the agenda in the call of the meeting.

8. That the Commissioner in Chancery shall be authorized to select a person to preside at said meeting and if such a person is not selected by the Commissioner in Chancery, the Commissioner in Chancery shall be authorized himself to preside at said meeting.

9. That except as herein provided, the generally accepted rules of order shall be those set forth by Robert's Rules of Order, as amended.

10. That each member of the congregation shall have a free right to speak at said meeting, but such right of speech shall be limited to five minutes per person per resolution.

11. That the Commissioner in Chancery is authorized to select tellers to assist in the count of the votes.

12. That said meetings shall be held in the Tabernacle of the church at the time and place aforesaid set.

13. That the Commissioner in Chancery shall have the authority that if the meeting is not concluded at the time and place stated, to adjourn the meeting to such other time and place as in his discretion he deems necessary and that said meeting shall then continue on at such future time and place until all resolutions on the agenda are acted upon.

14. That after the meeting or meetings, the Commissioner in Chancery

shall forthwith report to the Court his findings.

ENTER this 7th day of March, 1984.

Alfred W. Whitehurst

Judge

I ask for this:

Edward Delk p.q.

APPENDIX M

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

ULYSSES GHOLSON, et al., etc.,

Petitioners, IN CHANCERY

v. No. C83-1705

MILTON A. REID, etc., et al.,

Defendants.

ORDER

THIS CAUSE came on this day to be heard upon the pleadings duly filed; upon the evidence heard ore tenus before the Court; upon notice to all parties; and was argued by counsel.

And it appearing to the Court that in the interest of having a fair and impartial annual meeting of the members of New Calvary Baptist Church, Judge Ryan of this Court entered an order on October 27, 1983 appointing William Mazel as Special Commissioner to run and oversee the said

annual meeting which was scheduled for October 27, 1983.

It further appearing to the Court that by order, entered on December 19, 1983, Judge Ryan explained that the October 27, 1983 order was entered after the following findings of fact were made: (a) that civil and property rights are and were involved in or arise from this church controversy; (b) that at the scheduled annual meeting of the church, the Defendants propose to present a Constitution and By-Laws for adoption that would divest the trustees of the church of legal title to church property and vest the same in a Property Chairperson and would take from the congregation the power to resolve any controversy concerning church property; (c) that the Defendants, allegedly, in the absence of the approval of the church congregation at a properly called meeting, implemented certain schemes such as

"silencing" and "disenfranchisement" in order to diminish the voting strength of their opponents and, in addition, implemented the scheme of "voting by proxy" in order to increase their own voting strength. The use of such schemes might result in an unfair and partial annual meeting; (d) that this court was not required to resolve any ecclesiastical issues that may exist between the litigants; and (e) that the civil and property rights dispute can be resolved by the use of neutral principals of law without violating the First Amendment to the Constitution of the United States of America.

It further appearing to the Court that by order, entered on January 31, 1984, Judge Ryan of this Court set March 29, 1984 as the date for the annual meeting and established guidelines for the calling of and conducting of said meeting. Said

meeting date of March 29, 1984 having been changed by this Court on March 22, 1984 to April 8, 1984, provided, however, that the Defendants produced before William Mazel, Commissioner in Chancery, with a copy of it to Edward Delk, the Petitioners' attorney, a membership list of all members of the New Calvary Baptist Church, 800 East Virginia Beach Boulevard, Norfolk, Virginia, as of November 30, 1983, setting forth their names, street address, city, state and zip code, and provided further that the required notice can be given after the said membership list is produced as ordered.

It further appearing to the COurt that notwithstanding the various orders entered by this Court in the cause on October 27, 1983; December 19, 1983; January 31, 1984; March 7, 1984; and March 15, 1984 to ensure that the members of the New Calvary Baptist Church will have a fair and impartial meeting, particularly when the matter to be

considered is the adoption of the same or substantially the same Constitution and By-Laws mentioned in the order of December 19, 1983, the Defendants have now called and held an annual meeting (without producing the said membership list) of the members of New Calvary Baptist Church on April 8, 1984 at 1:15 p.m. and that certain items were presented at the meeting and voted upon, including the adoption of said Constitution and By-Laws for the church, thereby circumventing and subverting the orders heretofore entered in this cause. It is hereby

ORDERED, ADJUDGED and DECREED that the annual meeting of the members of New Calvary Baptist Church, Norfolk, Virginia, held on April 8, 1984 at 1:15 p.m., and all proceedings therein, are hereby declared void and illegal.

ENTERED this 12th day of April, 1984.

Alfred W. Whitehurst

Judge

I ask for this:

_____ p.q.

APPENDIX N

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

---

No. 84-1257

---

Dr. Milton Reid, as pastor, and Lillian M. Brinkley, Briscoe Boddie, St. Paul Lewis and Brenda H. Andrews, as Officers and/or Members of the New Calvary Baptist Church, Norfolk, Virginia; Dr. Curtis W. Harris, as Moderator of the Bethany Baptist Association of Southside, Virginia; Dr. Ronnie Joyner, as President of the Tidewater Metro Baptist Ministers Conference; and Bishop Thomas Talley, as President of the Virginia Black Pastors Conference,

Appellants,

v.

Honorable William Mazel, as Commissioner in Chancery of the Circuit Court of the City of Norfolk, Fourth Judicial Circuit of Virginia,

Appellee.

ORDER

This matter is before the court on plaintiffs' expedited appeal from the district court's dismissal of their action brought under 42 U.S.C. §1983 challenging the constitutionality of a state court's injunctive decree appointing defendant

Mazel chancery commissioner to oversee the annual meeting of the church congregation of which plaintiffs are, respectively, pastor, officers, and related officials.

And it appearing to the court from the record, the briefs, the oral argument, and representations of counsel that

1. The underlying claim by plaintiffs in this action is that the challenged injunctive decree violates free exercise rights of plaintiffs under the First Amendment to the United States Constitution;

2. The identical issue is presently pending before the Supreme Court of Virginia in an appeal by appellant Reid and others, taken as defendants in the state court action in which this challenged decree was entered.

3. No stay of the state court decree pending its appeal to the Supreme Court of Virginia is presently in effect, though

such a stay has been sought and denied in the state court system as untimely requested;

4. By tacit agreement of the parties to this and the related state court litigation, the annual church meeting in issue has been postponed from time to time and at the time of oral argument in this appeal was not known or thought by counsel to be imminent;

5. There may be state court procedures whereby the state court appeal can be expedited for early resolution, and if necessary, a stay pending its resolution yet obtained from a competent state court; counsel for appellants has represented an intentention expeditiously to seek both an expedited appeal and stay in the state court system;

6. Though, as originally pleaded, appellants' claim in this action sought wider-ranging relief, the relief ultimately

sought in the district court and on this appeal is now only a stay of the challenged state court decree pending resolution by the Supreme Court of Virginia of the underlying constitutional challenge to it, in order to prevent earlier mooting of the constitutional challenge b intervening agents.

7. While the federal courts before which this action is pending might properly order such a stay, see Henry v. First National Bank of Clarksdale, 595 F.2d 291 (5th Cir.1979), and while the effect of such a stay would in fact be to further the general interests of comity and federalism in allowing state courts to determine in the first instance and free of unnecessary collateral intervention by federal courts those federal questions properly pending before them, intervention for even such a limited purpose should be avoided unless clearly required to avoid irretrievable

loss of any federally secured rights at issue in the state proceedings;

8. Such a stay does not appear required at this time, and would never be required if, as now seems possible, the appeal now pending in the Supreme Court of Virginia may be resolved before the challenged state decree is sought to be implemented;

9. Correspondingly, immediate decision by this Court of the issues presented on appeal is not required and should abide further developments in the pending state proceedings, with jurisdiction retained in this court to take such actions as may be required by those developments;

Accordingly, it is ORDERED that:

1. Decision in this appeal will be held in abeyance pending further developments in the state court proceedings

wherein the identical constitutional issue is pending;

2. The parties, by their respective counsel, are directed to advise this court forthwith and in writing of any significant developments in those state court proceedings, and in any event are required to report to the court on June 1, 1984, of the then current status of those proceedings and of any then pending motions in them;

3. Jurisdiction is retained in this court for such further orders and proceedings as may be required by motions of the parties or by the court acting sua sponte.

With the concurrence of Judg Chapman and Judge Butzner.

J. Dickson Phillips, Jr.

United States Circuit Judge.

May 10, 1984

## APPENDIX O

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 84-1257

Dr. Milton Reid, as pastor, and Lillian M. Brinkley, Briscoe Boddie, St. Paul Lewis and Brenda H. Andrews, as Officers and/or Members of the New Calvary Baptist Church, Norfolk, Virginia; Dr. Curtis W. Harris, as Moderator of the Bethany Baptist Association of Southside, Virginia; Dr. Ronnie Joyner, as President of the Tidewater Metro Baptist Ministers Conference; and Bishop Thomas Talley, as President of the Virginia Black Pastors Conference,

Appellants,

v.

Honorable William Mazel, as Commissioner in Chancery of the Circuit Court of the City of Norfolk, Fourth Judicial Circuit of Virginia,

Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. J. Calvitt Clarke, Jr., District Judge. (C/A 84-114-N)

Argued: May 8, 1984 Decided: April 4, 1985

Before PHILLIPS and CHAPMAN, Circuit Judges, and BUTZNER, Senior Circuit Judge

William M. Kunstler (Betty Lawrence Bailey; James F. Gay on brief) for appellants; John A. Gibney, Jr., Assistant Attorney General (Gerald L. Baliles, Attorney General of Virginia on brief) for appellee.

PER CURIAM:

The pastor, officers, and other officials of the New Calvary Baptist Church, Norfolk, Virginia, appeal from the district court's order dismissing their action brought under 42 U.S.C. §1983 challenging the constitutionality of a state court's injunctive decree appointing a commissioner to oversee the annual meeting of the church congregation. The narrow relief ultimately sought on appeal is a stay of the state court decree pending resolution by the Supreme Court of Virginia of the decree's constitutionality. We found no circumstances justifying an immediate stay, but we retained jurisdiction. See Reid v. Mazel, No. 84-1257 (4th Cir. May 10, 1984) (order). We now affirm the district court's judgment of dismissal.

The Supreme Court of Virginia decided Reid v. Gholson, 1 VLR 1001, 229 Va. __

(1985). That appeal arose out of the same protracted dispute between two factions in the New Calvary Church. While recognizing that the role of the judiciary in resolving congregational disputes is narrowly circumscribed by state and federal constituitonal guarantees of religious freedom, the Virginia Supreme Court held that the state trial court did not exceed its proper sphere and that the authority vested in the commissioner did not infringe those guarantees.

Because the Supreme Court of Virginia has ruled on the constitutional issue, there is no longer any need for a stay of the state decree pending that court's decision. Moreover, we find no reversible error in the district court's dismissal of the action.

Ordinarily federal courts are obliged to exercise the jurisdiction conferred on them. Nevertheless, in exceptional

circumstances, a federal court may decline to exercise jurisdiction over a controversy that concurrently is being litigated in a state court. See generally Moses H. Cone Memorial Hospital v. Mercury Construction Corp., 460 U.S. 1, 13-19 (1983); Colorado River Water Conservation District v. United States, 424 U.S. 800, 817-20 (1976). This case presents exceptional circumstances permitting dismissal. The core of the dispute involves the administration of the church's property. Before this action was filed, the state court had assumed jurisdiction over this dispute and appointed a commissioner with broad powers to facilitate its resolution by the congregation. The state decree raised federal constitutional issues. But it also involved questions pertaining to the authority of the commissioner whose resolution required resort to state law and the state constitution. Indeed, before

this action was instituted, the Supreme Court of Virginia had been asked to reverse the decree. These circumstances justified the district court's refusal to entertain relitigation of the issues that were currently pending on review in the Supreme Court of Virginia. See Colorado River, 424 U.S. at 818-19.

The Virginia Supreme Court has decided the constitutional questions underlying this appeal. Any further relief desired by the parties should be sought from the state courts as the litigation progresses or by review of the state decision in the United States Supreme Court. Therefore, we affirm

the judgment of the district court dismissing this action.[16]

AFFIRMED.

---

[16] In an oral opinion required by the exigencies of time, the district court based its decision on res judicata and abstention. Although application of these theories may be questionable, the judgment dismissing the action may be sustained by reference to the principles pertaining to concurrent state litigation explained in Moses H. Cone Memorial Hospital, 460 U.S. at 13-19, and Colorado River, 424 U.S. at 817-20.